Court No.3

Criminal Misc. Application No. 205 of 2003

Pradeep Kumar Bahl …… Petitioner.

Vs.

State of Uttaranchal and others …… Respondents.

Hon'ble Irshad Hussain, J.

Heard Sri Rajendra Singh learned counsel for the petitioner and learned AGA.

This is a petition under section 482/483 of the Code of Criminal Procedure (hereinafter referred as 'Code') against the judgment and order dated 25-7-2003. A petition under section 125 of 'Code' was preferred by Smt. Minakshi Bahl against her husband Sri Pradeep Kumar Bahl and the same was decided on merit by the Additional Civil Judge (Junior Division) Roorkee by judgment and order dated 21.11.2001. The learned Additional Civil Judge (Junior Division) granted maintenance to the child born out of the wedlock but did not grant any maintenance to the wife. She being aggrieved preferred the revision before the Sessions Judge which was transferred to Additional Sessions Judge/III Fast Track Court Haridwar and was numbered as 928/2001. By the above impugned judgment and order this revision was decided and the learned Sessions Judge set aside the order of the Additional Civil Judge and remanded the case for decision afresh according to law by a Magistrate who was competent to decide the same.

The learned counsel for the petitioner submitted that the order of remand is without jurisdiction because the ground of remand taken that the Additional Civil Judge was not invested with the powers of the Judicial Magistrate and could not have decided the petition under section 125 of 'Code' on merit was not taken by any of the party to the proceedings. Even otherwise on the basis of de-facto doctrine the order of the lower court was not without jurisdiction. This apart Civil Judges (Junior Division) in the state are entrusted with the powers of Judicial Magistrates. At any rate since the evidence has been adduced by both the parties the learned

Sessions Judge could have himself decided the matter on merit on appraisal of the evidence adduced in the case instead of relegating the parties to fresh litigation after remand. This way the petition could have been decided on merit at the earliest without there being delay in the disposal after remand. It is thus evident that the learned Sessions Judge has not exercised his jurisdiction properly and went on to set aside the judgment and order of the Additional Civil Judge (Junior Division) on the above ground without taking into aspect the attending circumstances and also the de facto doctrine.

For the above reasons the impugned judgment and order can not legally be maintained and the same deserve to be set aside.

The petition is allowed. The judgment and order dated 25.7.2003 is set aside. The learned Additional Sessions Judge/III Fast Track Court Haridwar shall dispose of the revision petition No. 928/2001 on merit after legally permissible appraisal of the evidence of the parties adduced in the case and award maintenance, if any, to the wife and child if they are found entitled thereto. The learned Sessions Judge shall expedite the disposal of the revision petition.

(Irshad Hussain, J.)

Dated: 23.9.2003

ISB